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In The
Supreme Court of the United States

OCTOBER TERM 1966

No. 767

CHARLES A. NAVE, *Appellant*,

vs.

THE CITY OF SEATTLE, *Appellee*.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

MOTION TO DISMISS OR AFFIRM

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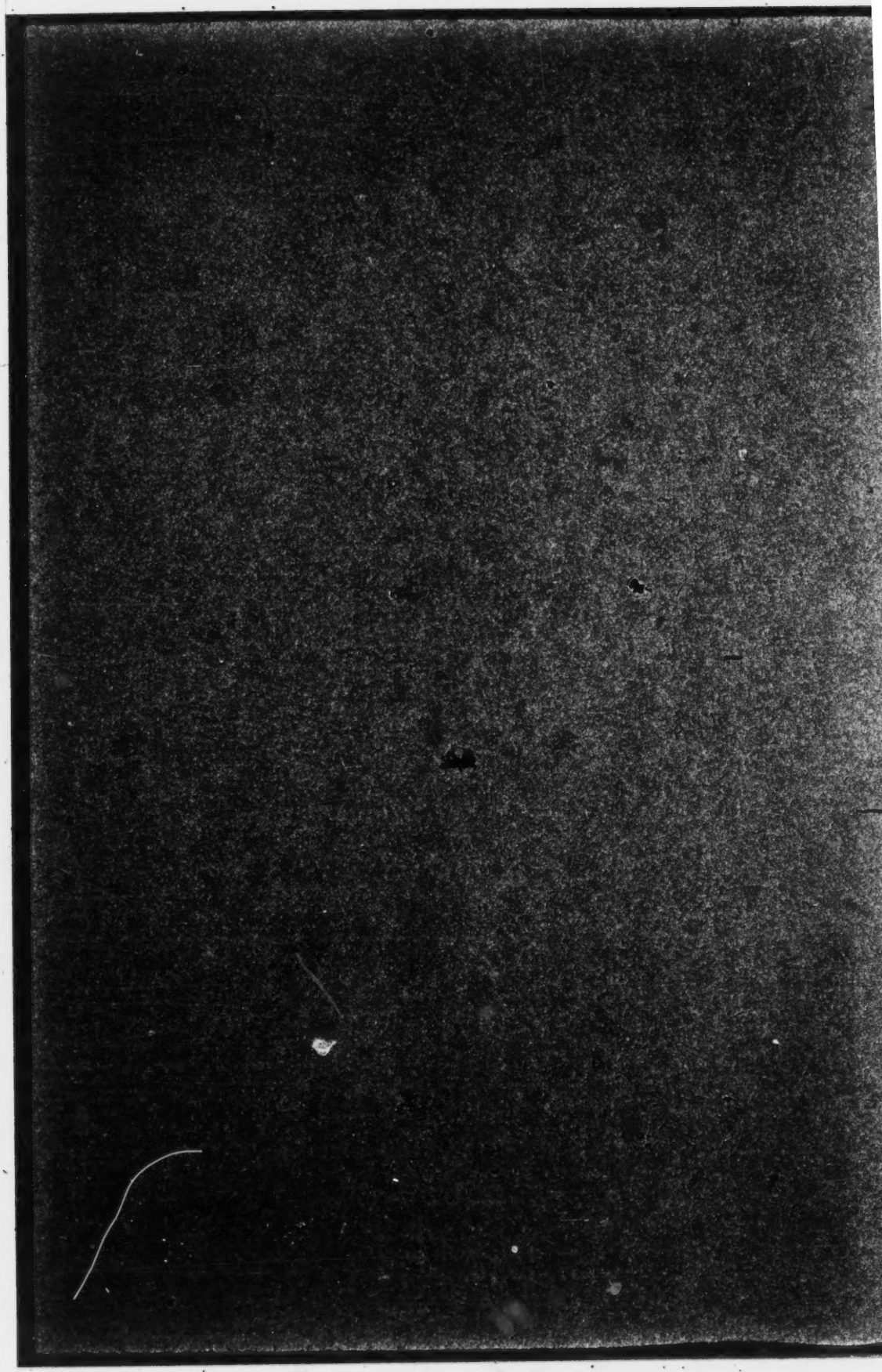

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The appellee, The City of Seattle, moves the court to dismiss the appeal herein on the ground that it does not present any federal question, or in the alternative affirm the judgment of the Supreme Court of the State of Washington on the ground that the judgment rests on an adequate non-federal basis.

STATEMENT

Appellant was arrested on December 20, 1961 and charged with the violation of certain provisions of two Seattle City Ordinances, to wit: failing to comply with a traffic sign requiring a right turn and resisting

an officer. He was tried and found guilty on both charges by the municipal court of Seattle. He appealed to the superior court and was again found guilty. He appealed to the supreme court which reversed appellant's convictions on both counts and ordered the City's complaint to be dismissed. *Seattle v. Nave,* 62 Wn.2d 446, 383 P.2d 491. The remitttur from the supreme court came down on September 13, 1963.

On December 6, 1963 appellant filed a claim for damages against The City of Seattle with the city clerk and on December 10, 1963 he filed a supplement to this claim.

On February 10, 1964 appellant started the civil action which is the subject of this appeal by filing his complaint with the clerk of King County and serving a copy on appellee, wherein he sought judgment against appellee for damages allegedly occurring at and subsequent to the time of his arrest on December 20, 1961. The latest date which his complaint alleged he received any injury was March 5, 1962. Thereafter appellant's case against appellee was set to be tried on January 27, 1965 before a jury. On January 6, 1965 appellee served and filed its motion for summary judgment, based on the ground that appellant had not filed his claim against appellee within the time required by statute, Revised Code of Washington (R.C.W.) 35.31.010.

On January 25, 1965 appellee's motion was granted by the trial court for the reason that appellant had not filed his claim against appellee within the time required by R.C.W. 35.31.010 *supra,* and appellant's action was dismissed with prejudice. Appellant perfected an appeal to the supreme court of the State of Washington which affirmed the trial court in *Nave v. Seattle,* 68 Wash. Dec. 2d 714, 415 P.2d 93. (This decision is set out in full in Appendix A herein).

ARGUMENT

It is submitted that the decision of the supreme court of the State of Washington affirming the trial court is a correct pronouncement of Washington law which does not involve or give rise to any federal constitutional questions. The trial court granted appellee's motion for summary judgment on the ground that appellant had not met a condition precedent to the maintenance of an action against a first class city such as The City of Seattle by filing a claim in accordance with R.C.W. 35.31.010, the pertinent part of which provides as follows:

> "R.C.W. 35.31.010 First Class Cities — Time for Filing. All claims for damages against any city of the first class must be filed with the city clerk or other proper officer within ninety days from the date that the damage occurred or the injury was sustained: *Provided,* That claims for damages arising from an alleged defective sidewalk must be filed within thirty days from the date the damage occurred or the injury was sustained."

Seattle Charter Article IV, Section 24 relating to claims for damages against the city provides as follows:

> "CLAIMS FOR DAMAGES: All claims for damages against the city must be presented to the city council and filed with the clerk within thirty days after the time when such claim accrued, and no ordinance shall be passed allowing any such claim or any part thereof, or appropriating money or other property to pay or satisfy the same or any part thereof, until such claim has first been referred to the proper department, nor until such department has made its report to the city council thereon, pursuant to such reference. All such claims for damages must accurately locate and describe the defect that caused the injury, accurately describe the injury, give the residence for six months last past of the claimant, contain the items of damages claimed, and be sworn to by the claimant. No action shall be maintained against the city for any claim for damages until the same has been presented to the city council and sixty days have elapsed after such presentation."

The thirty day filing period in said Charter provision was superseded by the ninety day provision of R.C.W. 35.31.010 set forth above except with regard to sidewalk claims.

The timely filing of a claim in accordance with the above statutory and charter provisions is a condition precedent to the maintenance of an action for damages against Washington cities. *Keesling v. Seattle,* 52 Wn. 2d 247, 324 P.2d 806 (1958); *Sheer v. Everett,* 134

Wash. 385, 235 P. 789 (1925); *Lindblom v. Seattle,* 86 Wash. 305, 150 P. 422 (1915); *International Contract Co. v. Seattle,* 74 Wash. 662, 134 P. 502 (1913).

The Washington court correctly ruled herein that appellant's claim was not timely with regard to a possible action for false arrest or false imprisonment which accrues when the arrested person is released on bail, *Belflower v. Blackshere,* 281 P.2d 423, 49 ALR 2d 917 (Okla. 1955), and not timely with regard to an action based on "misuse of office and/or abuse of process" since the last act of the City in appellant's criminal prosecution was presentation of argument in the former appeal in the supreme court on February 5, 1963. The Washington court noted that while appellant's claim would have been timely with regard to an action for malicious prosecution, appellant specifically asserted a number of times that his claim was not predicated upon any theory of malicious prosecution.

It is apparent that the Washington court's affirmance of the trial court's summary judgment dismissing appellant's damage action on the ground that, as a matter of Washington law, a timely claim for damages against appellee had not been filed was correct and that no conceivable federal question is in any way raised or presented by such ruling.

In the state supreme court, and apparently also in this court, appellant maintains that his right to a jury trial was guaranteed under the United States Constitution, Amendment 7, and by the Washington Constitution, Article I, Section 21, and that such right could not be taken from him by virtue of the entry of a summary judgment disposing of his action as a matter of law.

The Washington court succinctly disposed of such contention as follows:

> "This exact contention was before the United States Court of Appeals, 7th circuit, in *United States v. Stangland,* 242 F.2d 843 (7th Cir. 1957) and was rejected upon the authority of the decision of the United States Supreme Court in *Fidelity & Deposit Co. of Maryland v. United States,* 187 U.S. 315, 47 L. Ed. 194, 23 Sup. Ct. 120 (1902). This court has adopted the same reasoning in proceedings where there are no issues of facts to be determined by the jury. *In re Brandon v. Webb,* 23 Wn.2d 155, 160 P.2d 529 (1945)."

In the case of *United States v. Stangland, supra,* the Court of Appeals for the Seventh Circuit, in speaking of the right to a jury trial where a summary judgment had been entered, states at page 848:

> "It is urged that the Act encroaches upon Amendments Seven through Ten. Surely, the granting of a motion for summary judgment where there is no genuine issue of fact is not a denial of the right to trial by jury guaranteed by the Seventh Amendment. *Fidelity & Deposit*

Co. of Maryland v. United States, 187 U.S. 315, 23 S. Ct. 120, 47 L. Ed 194; *Lindsey v. Leavy,* 9 Cir., 149 F.2d 899. . . ."

In his Jurisdictional Statement, appellant seems to be maintaining that Section 1 of the Fourteenth Amendment to the United States Constitution guarantees his "inviolate right" to a jury trial as provided for in Article I, Section 21 of the Washington State Constitution.

Appellant in his Jurisdictional Statement, Appendix "G" p. xxx states that "The above portion of the Fourteenth Amendment makes valid laws of the State mandatory to each person therein. In its acceptance of Washington as a State, Congress accepted Article I, Sec. 21, of the State Constitution, and enforcible by Sec. 1 of the 14th Amendment." No authority has been cited to support such novel contention, and it is submitted that the same is not tenable.

In the case of *Fay v. New York,* 332 U.S. 261, 67 S.Ct. 1613, 91 L. Ed. 2043, it was held that due process and equal protection are not denied to a defendant in a criminal case tried by a jury taken from a special panel, and although state constitutional rights were not specifically discussed the court spelled out the overall relation of the Fourteenth Amendment with regard to state court juries as follows:

"The function of this federal court under the Fourteenth Amendment in reference to state

juries is not to prescribe procedures but is essentially to protect the integrity of the trial process by whatever method the state sees fit to employ . . ."

CONCLUSION

We respectfully submit that the appellant presents no question for the decision of this court; and that the granting of a summary judgment against appellant is not violative of any of appellant's Federal (or State) constitutional rights. Therefore, the appeal should be dismissed, or the judgment below affirmed.

Appellee has not overlooked the fact that appellant's Jurisdictional Statement is replete with burdensome, irrelevant, immaterial, and scandalous matter which is of a particularly repugnant character with regard to statements made castigating and vilifying the superior court judge hearing appellant's case, the state supreme court (e.g., Jurisdictional Statement pp. 3, 10, 11, 12, Appendix "A", pp. IV, XI, XII, Appendix "B", p. XVII) as well as with regard to various unsupported and erroneous allegations of criminal and other misconduct on the part of appellee (e.g., Jurisdictional Statement pp. 10, 22, 26, Appendix "A", pp. IV, VI, IX, Appendix "B". pp. XVIII, XXIX), and appellee therefore requests that said Jurisdictional Statement be disregarded and stricken by the court

by reason of the inclusion of such matter therein.

Respectfully submitted,

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